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Supreme Court of the United States

OCTOBER TERM, 1961

No. 873

PETER S. SARELAS,

Petitioner,

vs.

JOHN C. GEKAS; and CONSTANTINE D. CHAPRALIS, alias Major C. D. Chapralis; and ANDREW CARDARAS; and GEORGE W. ALEXANDER; and THEMIS ANAGNOST; and ATHANASIOS A. PANTELIS, also known as A. A. Pantelis; and WILLIAM J. RUSSIS; and DEMOSTHENES I. GEORGOULIS; and A. THOMAS RANGRAVES; and DEMETRIOS PARRY; and SPYROS D. SOTER, also known as S. D. Soter; and EVANGELOS NITTIS, also known as E. Nittis; and CONSTANTINE MAZARAKIS; and GEORGE S. PORIKOS; and EVANGELOS C. DESPOTES; and THEMIS TSAOUSSIS; and ADAMANTIOS ANDROUTSOPOULOS; and GEORGE A. XYDIS; and GEORGE LOURIS;

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Illinois

BRIEF FOR RESPONDENT THEMIS ANAGNOST IN OPPOSITION

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BRIEF FOR RESPONDENT THEMIS ANAGNOST IN OPPOSITION.

In *Sarelas* v. *Gekas, et al.*, to which this respondent is a party, (designated as Case No. 1 in the petition), the petitioner filed a complaint which alleged two causes of action—one, for defamation, and the other, for assault and battery (Abst. 1-5; 122-3). The trial judge struck the portions alleging the action for defamation, granting leave

to file an amended complaint as to this cause of action, and entered a summary judgment as to the assault and battery action (Abst. 122-3). Sarelas appealed this order to the Supreme Court of Illinois (Abst. 123-5) which promptly dismissed the appeal, upon appellees' motion (Ptn. App. "A", p. 2) This action is the subject of Sarelas' petition in this Court.

QUESTION PRESENTED.

Will this Court accept jurisdiction to review a decision of the highest court of the State of Illinois that it has no jurisdiction to consider an appeal on its merits because, as a matter of Illinois practice and procedure, the order appealed to it was not final and appealable?

This respondent contends—"Obviously, No!"

STATUTE INVOLVED.

Section 50(2)

Illinois Civil Practice Act

[Ill. Rev. Stats. (1961) c. 110, par. 50(2)]

"If multiple parties or multiple claims for relief are involved in an action, the court may enter a final order, judgment or decree as to one or more but fewer than all of the parties or claims only upon an express finding that there is no just reason for delaying enforcement or appeal. In the absence of that finding, any order, judgment, or decree which adjudicates fewer than all of the claims . . . does not terminate the action, is not enforceable or appealable and is subject to revision at any time before the entry of an order, judgment or decree adjudicating all the claims, rights and liabilities of all the parties."

STATEMENT OF THE CASE

The complaint states two causes of action, or claims, by Sarelas against numerous defendants (Abst. 1-5). The trial court disposed of the action for assault and battery by entering a summary judgment as to that cause of action *only* (Abst. 123). It then held that the complaint should be stricken because the cause of action for defamation was defectively stated—but the order gave Sarelas leave to file an amended complaint in thirty days (Abst. 123). Instead of amending, Sarelas appealed from that order (Abst. 124-6). No judgment has ever been entered as to the defamation action.

In Illinois, an order sustaining a demurrer, or motion to strike, has never been appealable when leave to plead further is granted [See: *Livingston County Building & Loan Ass'n* v. *Keach*, 213 Ill. 59, 72 N.E. (2d) 769; *Giagos* v. *Eich*, 56 Ill. 297; *Knapp* v. *Marshall*, 26 Ill. 63].

Thus, the order appealed from disposed of one cause of action (assault and battery), but not the other (defamation). Section 50(2) of the Illinois Civil Practice Act prohibits appeals until the trial court disposes of the entire case unless the trial court makes an express finding that no just reason exists for delaying the appeal. No such finding was made (Abst. 122-3).

Paragraphs B(1), B(2) and C of the motion to dismiss the appeal, or for other relief, called this defect to the Illinois Court's attention (Motion, pp. 3-5). The motion to dismiss was promptly granted (Ptn., App. "A", p. 2).

REASONS FOR DENYING THE WRIT.

The Illinois Supreme Court clearly, and most correctly, held, as a matter of Illinois practice and procedure, that the trial court's order was not final and appealable. Without regard to whether Sarelas' claimed federal questions are more than ephemeral, the fact is that this Court has consistently declined to exercise its jurisdiction where the state court's decision is based upon principles of local practice and procedure (*C.I.O.* v. *McAdory*, 325 U.S. 472, 477; *Parker* v. *Illinois*, 333 U.S. 571; *See also:* cases cited, Robertson & Kirkham, *Jurisdiction of the Supreme Court of the United States* (Wolfson & Kurland ed., 1951) p. 189, at notes 21 and 22).

In *John* v. *Paulin*, 231 U. S. 583, at 585, this Court said:

> "Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law."

CONCLUSION.

Sarelas v. *Gekas* presents nothing for this Court to review. Therefore, the petition should be denied as to that case.

Respectfully submitted,

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